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March 23, 2012

## ***FILED VIA ECFS***

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, D.C. 20554

**Re: *Ex Parte* Notification**  
**WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135;**  
**WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45;**  
**WC Docket No. 03-109; WT Docket No. 10-208**

Madam Secretary:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an *ex parte* presentation made in connection with the above-captioned proceedings.

On Thursday, March 22, 2012, Julia Tanner, General Counsel of MTPCS, LLC d/b/a Cellular One, ("MTPCS"), and the undersigned, Brooks Harlow of Lukas, Nace, Gutierrez & Sachs, LLP, counsel for MTPCS, met with Trent Harkrader, Chief; Amy Bender, Deputy Division Chief; and Theodore Burmeister, Senior Attorney Advisor, all of the Telecommunications Access Policy Division of the Wireline Competition Bureau; and Patrick Halley, Policy Advisor, Office of the Bureau Chief to discuss the Petition for Reconsideration filed by MTPCS in the above dockets on December 29, 2011 ("Petition").

At the meeting, the contents of the Petition were discussed, with the focus on the unintended, unfair, and retroactive effect created by the application of the FCC's freeze and cap in Montana due to the unique 98% population coverage requirements that state imposes on CETCs. The attendees discussed the fact that this very high level of construction is mandated by state regulation and is required to be done during the five year time period after grant of CETC

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status by the Montana commission. All three such grants occurred in recent years, such as the grant to MTPCS in 2008.

MTPCS noted that there was no opposition to the Petition, and it received support from the Montana Public Utility Commission among others. In addition, the undersigned addressed questions regarding the potential impact on support of granting the petition, and reviewed a handout clarifying the operational mechanics of the relief requested. The handout is attached. The handout also notes comments filed by other parties in one or more of the above-referenced dockets in support of the Petition.

As requested by Commission staff, MTPCS provides the following citation to the Montana rule that creates the "98% build out" requirement referenced in the petition as the cause for the disparate and retroactive reduction in support under the Report and Order: Admin. Rules Mont., § 38.5.3213(<http://www.mtrules.org/gateway/RuleNo.asp?RN=38%2E5%2E3213>). The question of whether the Montana rule applies to wireline CETCs arose. In an email received this morning, a member of the Montana PSC staff informally confirmed that the MPSC interprets ARM 38.5.3213 as applying only to wireless carriers.

We trust you will find this information useful. If you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,



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Petition for Reconsideration of  
MTPCS, LLC  
WC Docket 10-90, et al.

Ex Parte Presentation of MTPCS  
March 22, 2012

# Qualification for Alternative Calculation – Narrow Exception

- In states that conditioned CETC designation on a specific network coverage requirement
- For CETCs whose July 2012 20% CAF phase-down would reduce the CETC's support at least 25% below the capped support it would receive in 2012 absent CAF freeze

# Proposed Alternative Calculation

- Frozen baseline calculation would be based on:
  - line counts as of September 30, 2011 and
  - CETC cap reduction factors and per line support amounts as of December 31, 2011

# Proposed Alternative Calculation Process

- Eligible CETCs would file their September 30, 2011, line counts with USAC on or before March 31, 2012, or upon approval of this petition
- For IAS, USAC would be directed to process the IAS line counts according to the same disbursement timetable as the remaining categories of support

# Supporting Comments: Montana PSC

- “The PSC believes that MTPCS has presented a reasonable alternative to what the FCC has proposed....”
- “Wireless CETCs in Montana have diligently followed requirements set forth upon them by the PSC to achieve 98% coverage within a 5 year period, including investments and expansion made in 2010 and 2011. To reduce high cost support so drastically from what wireless CETCs in Montana had expected to receive in 2012, as the FCC Order suggests, puts sunk investments at risk, as well cellular service for many Montanans in rural communities.”

Reply Comments of Mont. PSC re MTPCS Petition for Recon.,  
Dkt. 10-90 (Feb. 21, 2012)(emphasis added)

# Supporting Comments: Sen. Olson

- “I urge you to consider that funding for cell phone service is necessary for continuation of service to consumers living or working in rural areas of Montana. This includes customers who subscribed to service in 2011. Annual average frozen funding for cellular services should not be determined based upon 2010 subscriber numbers. Since more recent data are available, I urge you to calculate “frozen” support for cell phone networks based upon the most recent information, as proposed in the petition for reconsideration from MTPCS....”

Letter from Senator Alan Olson, Mont. State Senate, to Chmn. Genachowski, Dkt. 10-90 (Feb. 10, 2012)(emphasis added)



# Supporting Comments: MITS/Sagebrush

- “In its Petition for Reconsideration of the FCC USF Order, Montana PCS, LLC (MTPCS) requested “a limited exception from the CETC support amount baseline calculation methodology for CETCs subject to state mandated network build-out requirements.... Sagebrush concurs and supports MTPCS’ Petition.”
- “Montana is one of the least densely populated states in the nation. The continuing shrinkage of universal service cost recovery funding has a substantial adverse impact on Sagebrush and the rural consumers it serves.... Sagebrush is committed to continue providing the same level of quality services to the rural customers as it has been and it cannot do that without sufficient support.”

FNPRM Reply Comments of Mont. Ind. Tel. Systems, at 19, Dkt. 10-90 (Feb. 17, 2012)(emphasis added)